The Post-Tribune Company, A Division of the Sun Times Company, a Subsidiary of Hollinger International Publishing, Inc. *and* Gary Newspaper Guild, TNG-CWA Local 34014. Case 13–CA–39228–1

September 12, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On October 26, 2001, Administrative Law Judge William N. Cates issued the attached bench decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed an answering brief and cross-exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The case involves an alleged unilateral increase in the amount deducted from employees' paychecks for health insurance coverage. The judge found that the Respondent violated Section 8(a)(5) and (1) in January 2001 by increasing these deductions, in order to pass on to employees a portion of a premium increase imposed by the Respondent's insurance carrier, without giving the Union notice and an opportunity to bargain. Because we find that the Respondent followed an established past practice and did not alter the status quo, we reverse the judge and dismiss the complaint.

I. FACTS

In early 1998, the Respondent acquired the Post-Tribune through an asset purchase. The Respondent set initial terms and conditions of employment, hired a majority of its predecessor's employees, and recognized the Union. The parties began negotiating for a collective-bargaining agreement, but had not reached an agreement or impasse at the time of the events at issue here.

The Respondent's initial terms and conditions, as communicated to employees and the Union, listed the amounts that would be deducted from employees' paychecks for health insurance coverage. Although the list stated these amounts in dollars rather than percentages, the dollar amounts represented 20 percent of the premium for individual employee coverage and 40 percent of the premium for spouse and dependent coverage. That is, the premium cost for individual coverage was divided between the Respondent and the employee on an 80/20-percent basis, and the cost for spouse and dependent coverage was divided on a 60/40-percent basis.

In both January and July 2000, in response to premium increases by its insurance carrier, the Respondent increased the dollar amounts of employees' payroll deductions for health insurance. Each time, the Respondent issued a memorandum notifying employees of the new amounts to be deducted from their paychecks for health insurance. Although the memoranda again expressed these amounts in dollars rather than as percentages, the new dollar amounts maintained an 80/20-percent and 60/40-percent allocation of the premium cost.[1]

About December 8, 2000, the Respondent announced that it was changing insurance carriers.[2] About December 15, 2000, the Respondent announced that employees' biweekly insurance deductions would increase under the new carrier, and that the new deductions would take effect on January 1, 2001. The memorandum announcing this increase stated that "the company will continue to pay the majority of the costs: 80% for individuals and 60% for dependents." The memorandum then listed the new, increased dollar amounts that employees would pay.

On January 12, 2001, the Union sent a letter to the Respondent objecting to the January 1, 2001 increase and requesting bargaining. On March 30, 2001, the Union filed a charge alleging that the increase was a unilateral change in violation of Section 8(a)(5) and (1).

The judge found that the Respondent had "operated under a policy of [an] 80/20, 60/40 ratio" with respect to allocating insurance premium costs to employees, and that the Respondent had, at least since 1999, shared any of its carrier's premium increases with employees according to that ratio. Nevertheless, the judge found that the January 2001 increase in employees' payroll deductions for health insurance was a unilateral change in violation of Section 8(a)(5) and (1), because it was implemented without giving the Union notice and an opportunity to bargain. We reverse.

II. ANALYSIS

An employer violates Section 8(a)(5) and (1) if it makes a unilateral change in wages, hours, or other terms and conditions of employment without first giving the Union notice and an opportunity to bargain. See *NLRB*

[1] The Union did not object to, or request to bargain over, the January and July 2000 increases, and the complaint does not allege them to be unlawful.

[2] The judge did not allow the General Counsel to litigate whether the change in insurance carriers (or any change in benefits resulting from the change in carriers) was itself an unlawful unilateral change. He ruled that the existing complaint did not encompass that issue, and he denied the General Counsel's motion to amend the complaint. There are no exceptions to these rulings.

v. Katz, 369 U.S. 736, 743 (1962).[3] "[T]he vice involved in [a unilateral change] is that the employer has *changed* the existing conditions of employment. It is this *change* which is prohibited and which forms the basis of the unfair labor practice charge." *Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997) (quoting *NLRB v. Dothan Eagle*, 434 F.2d 93, 98 (5th Cir. 1970)). Therefore, where an employer's action does not change existing conditions—that is, where it does not alter the status quo—the employer does not violate Section 8(a)(5) and (1). See *House of the Good Samaritan*, 268 NLRB 236, 237 (1983). An established past practice can become part of the status quo. See *Katz*, 369 U.S. at 746. Accordingly, the Board has found no violation of Section 8(a)(5) and (1) where the employer simply followed a well-established past practice. See, e.g., *Luther Manor Nursing Home*, 270 NLRB 949, 959 (1984), affd. 772 F.2d 421 (8th Cir. 1985); *A-V Corp.*, 209 NLRB 451, 452 (1974).

The Respondent argues that it had an established past practice of allocating health insurance premiums on an 80/20-percent and 60/40-percent basis, and that this allocation was the status quo. The Respondent argues that it simply followed that practice in January 2001 by allocating its carrier's premium increase according to the same percentages. Therefore, the Respondent contends, the increase in the dollar amount of employees' payroll deductions did not alter the status quo, because employees continued to pay 20 percent or 40 percent of the new premium. We agree. The Respondent's position is supported by well-established precedent.

When the Respondent acquired the Post-Tribune in early 1998, it set initial terms and conditions of employment, including the amounts employees would be required to pay for health insurance. These amounts represented a sharing of premiums between the Respondent and employees on an 80/20-percent basis for individual coverage and a 60/40-percent basis for spouse or dependent coverage. The Respondent maintained these percentages in January 2000 and again in July 2000, when it allocated a portion of its carrier's premium increases to employees. Other than these two increases and the January 2001 increase at issue here, there is no evidence of any other premium increase by the carrier. Therefore, we agree with the Respondent that at the time of the January 2001 increase, the Respondent had a consistent, established past practice of allocating health insurance premiums on an 80/20-percent and 60/40-percent basis. In allocating a portion of the January 2001 increase to employees, the Respondent maintained the same 80/20-percent and 60/40-percent ratios it had consistently applied ever since it established initial terms and conditions of employment.

In several prior decisions, the Board has addressed this very issue: whether an employer may unilaterally pass on a portion of a carrier's premium increase to employees. The Board has found no violation of Section 8(a)(5) and (1) where, as here, the employer had a past practice of sharing premium costs with employees according to a particular percentage, and simply allocated the carrier's premium increase in a manner that maintained that percentage. See, e.g., *Luther Manor Nursing Home*, supra at 959 (no violation of Sec. 8(a)(5) and (1) where the employer, in accordance with past practice, paid one third of an insurance premium increase itself and required employees to pay the remaining two thirds); *A-V Corp.*, supra at 452 (where the employer's "consistent practice with regard to increased insurance premium costs . . . had been to allocate a portion of such costs to its employees on a pro rata share basis," the employer's allocation of a later premium increase in the same manner "merely represent[ed] a continuation of its past practice rather than an unlawful unilateral change in conditions of employment").

The Board also addressed this issue in *Maple Grove Health Care Center*, 330 NLRB 775 (2000). The Board stated:

> There are . . . circumstances in which an employer might lawfully pass on part of an externally imposed insurance premium increase to employees without first bargaining with their collective-bargaining representative. Thus, if an employer had a practice of paying, for example, 80 percent of the premiums and the employees 20 percent, no change in the status quo ante would be found if both the employer and the employees continued, after the increase, to pay the same percentages of the larger total.

330 NLRB at 780. In *Maple Grove*, however, unlike this case, there was no indication that the employer had passed on earlier premium increases to employees on a percentage basis. Indeed, in *Maple Grove* there appeared to be no evidence at all of what the status quo was. Therefore, the Board found that the employer's premium increase violated Section 8(a)(5) and (1).[4]

[3] It is undisputed that the cost to employees for health insurance was a term or condition of employment.

[4] In *Maple Grove*, the Board also remarked that the record did not show "what, if any, understanding the Respondent had with its employees" about how premiums would be allocated. 330 NLRB at 780. In this case, employees clearly were aware (through the January and July 2000 increases) of the Respondent's practice of passing on a portion of

By contrast, in this case, the record shows that the Respondent had a consistent, established practice of allocating insurance premiums on an 80/20-percent and 60/40-percent basis. We, therefore, find that this 80/20-percent and 60/40-percent allocation was the status quo. The January 2001 increase in employees' payroll deductions for health insurance did not alter the status quo, but simply maintained it. Accordingly, we find that the Respondent did not violate Section 8(a)(5) and (1) as alleged in the complaint.[5]

ORDER

The complaint is dismissed.

Kevin McCormick, Esq., for the General Counsel.
L. Michael Zinser, Esq. and *Pamela A. Davidson, Esq.*, for the Company.
Barbara L. Camens, Esq., for the Union.

BENCH DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This is a unilateral change in employees medical and dental biweekly insurance deductions case. At the conclusion of a 1-day trial in Chicago, Illinois, on October 5, 2001, and after hearing oral argument by Government and Company Counsel, I issued a Bench Decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's (the Board) Rules and Regulations setting forth findings of fact and conclusions of law. This certification of that Bench Decision, along with the Order which appears below, triggers the time period for filing an appeal (Exceptions) to the Board.

For the reasons stated by me on the record at the close of the trial, I found The Post-Tribune Company, a Division of the Sun Times Company, a Division of Hollinger International Publishing, Inc. (herein Company) violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (the Act) when on January 1, 2001, it changed the medical and dental biweekly insurance deductions for employees represented by Newspaper Guild, TNG-CWA Local 34014 (herein Union), without prior notice to the Union and without affording the Union, as the exclusive collective bargaining representative of the unit employees, an opportunity to bargain with respect to these mandatory subjects of bargaining. I rejected the Company's contention the Union, through the long standing administration of insurance at the Company, had waived its right to object to the premium changes. Concerning the Company's waiver issue I noted that waivers of statutory rights are not to be lightly inferred, but instead must be "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). In the instant case there was no evidence even of notification to the Union about the changes let alone that the issue was discussed and consciously explored and/or that the Union consciously yielded or clearly and unmistakably waived its interest in the matter. I also concluded the fact the Union did not protest or demand to bargain over previous unilateral changes in health and dental premium deductions did not require a different result than I reached. The Board has consistently held that a union that acquiesces in an employer's unilateral changes in terms and conditions of employment does not irrevocably waive its right to bargain over such changes in the future. *Georgia Power Co.*, 325 NLRB 1, 2 fn. 9 (1998). I likewise rejected, as clearly without merit, the Company's defense that the matter was barred either by the time limitations set forth in Section 10(b) of the Act or by the doctrine of laches.

I certify the accuracy of the portion of the transcript, as corrected,[1] pages 178 to 191, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

CONCLUSION OF LAW

The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that it violated the Act in the particulars and for the reasons stated at trial and summarized above and that its violations have affected and, unless permanently enjoined, will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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its insurance carrier's premium increases. Citing *Maple Grove*, however, the General Counsel and Union argue that because the Respondent's communications to employees expressed the employees' share of the premium in dollar amounts rather than as a percentage, there was no "understanding" that the amounts paid by employees reflected an 80/20-percent or 60/40-percent allocation. The General Counsel and the Union contend that in the absence of such an understanding, the 80/20-percent and 60/40-percent allocation cannot be the status quo. Members Cowen and Bartlett do not read *Maple Grove* as requiring such an understanding.

Member Liebman does not pass on whether *Maple Grove* requires such an understanding. In her view, under *Maple Grove*, the existence of an understanding would, at least, be evidence relevant to show what the status quo was. To the extent that *Maple Grove* can also be read to *require* an understanding (rather than simply considering it as evidence), Member Liebman would find that requirement to be satisfied. In doing so, she would rely on the Union's failure to inquire about the basis for the earlier premium increases and its acquiescence in those increases. Cf. *A-V Corp.*, 209 NLRB at 452 (union's "apparent concurrence, or at least acquiescence" in past increases was a factor in the Board's conclusion that a later increase was not a unilateral change).

[5] Because we find that the January 2001 increase did not change the status quo, and we dismiss the complaint on that basis, we find it unnecessary to pass on the Respondent's argument that the Union waived its right to bargain over the increase or the General Counsel's argument that the increase was presented as a fait accompli. Member Cowen additionally finds it unnecessary to pass on the Respondent's argument, rejected by the judge, that the complaint allegations are barred by Sec. 10(b).

[1] I have corrected the transcript pages containing my Bench Decision and the corrections are as reflected in attached Appendix C [omitted from publication].

Having found the Company effective January 1, 2001, unilaterally changed the biweekly medical and dental insurance premium deductions for its employees in the bargaining unit, represented by the Union herein, I shall recommend the Company be ordered to restore the status quo ante as existed prior to January 1, 2001, and upon demand by the Union bargain in good faith to an agreement or valid impasse regarding the changes. I recommend the Company be ordered to immediately refund any increase in the biweekly premiums charged after January 1, 2001. The refunded amounts may be held in escrow by the Company for a reasonable time (not to exceed 6 months) while the parties attempt to negotiate a resolution of this matter. If after 6 months the parties have not negotiated a resolution of the matter the moneys shall be refunded to the employees with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall also recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees," copies of which are attached hereto as "Appendix B" for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

[Recommended Order omitted from publication.]

APPENDIX A

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ASSOC. CHIEF JUDGE CATES: This is my decision in the Post Tribune Company, a Division of the Sun Times Company, a Subsidiary of Hollinger International Publishing Inc., herein Company, in Case 13–CA–39228–1.

The charge in this case was filed by Gary Newspaper Guild TNG-CWA Local 34014, herein, Union, on March 15 and amended on March 30, 2001.

The Regional Director for Region 13 of the National Labor Relations Board through an acting Regional Director, issued a complaint and notice of hearing on June 20, 2001 following an investigation by Region 13's staff.

An answer was timely filed to the complaint on or about July 6, 2001 and the matter came to be heard before me on October 5, 2001 in Chicago, Illinois. Certain of the facts

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herein are admitted or stipulated.

It is admitted that the Company is a corporation with an office and principal place of business in Merrillville, Indiana, where it is engaged in the publication of a daily newspaper. During the calendar year preceding the issuance of the complaint, which is a representative period, the Company in conducting its business operations that I have just described, derived gross revenues in excess of $200,000 and held membership in or subscribed to various inter-state news services including the Associated Press and advertised various nationally sold products, including Ford Motor Company and Chrysler automobiles.

The parties admit the evidence establishes and I find that the Company is an employer engaged in commerce within the meeting of Section 2(2)(6)(7) of the Act. The parties

admit the evidence establishes and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

The parties also admitted that Betty Villareal held the position of the Company Publisher's Administrative Assistant, and that at all times material to this case, she was an agent of the Company within the meaning of Section 2(13) of the Act.

In listening to the testimony of the various witnesses, I don't think there are contradicted facts between any of

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the six witnesses who testified. The facts that I shall rely on, however, I am specifically crediting those facts and am relying on those facts whether I identify the speaker or not.

It appears that the Company herein has for a number of years operated a newspaper with primary distribution in two counties in and around errillville, Indiana. It appears that the Company has had a somewhat longstanding relationship with the Union herein.

Former President of the Local Union Joseph Conn testified that the then Company and the Union executed a

collective bargaining agreement in November of 1990 that had a four year duration. And that following the four year duration of the contract, the parties exercised what I think he referred to as a green or greening provision of the collective bargaining agreement that brought forward or

continued the terms of the collective bargaining agreement for two separate two year extensions.

And that the parties started to negotiate a contract but were unsuccessful in doing so, and that in, somewhere in the 1997 to 1998 time frame, any negotiations toward a new contract according to former Union President Conn ground to a halt and that the Company was sold from the Knight Ridder Newspaper Industry to the current owner.

He placed the sales date as approximately February 2,

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1998. Local, former Local Union President Conn testified that the Company recognized the Union as its collective bargaining representative in March of 1998 for employees in the following unit.

The unit is "all full-time and regular part-time employees employed in the editorial department of the Post Tribune excluding the Executive Editor, the Executive

Managing Editor, the Editorial Page Editor, the Metropolitan Editor, the News Editor, the Features Editor, the Executive Sports Editor, the Chief Photographer, the Assistant Managing Editor, the Chief Librarian, the Copy Desk Chief, two Assistant Metro Editors, as defined in the predecessor contract, and any other Managers and Supervisors as defined in the National Labor Relations Act, the Confidential Secretary to the Executive Editor, and the Executive Managing Editor and all other employees."

It is alleged the parties admit, and I find, that such constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Based on the testimony of former Union President Conn, as well as the complaint allegations and admissions thereto, I find

that since at least March 4, 1998, and at all material times the Union has been the designated exclusive collective bargaining representative of the unit

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as I have just described, and has been recognized by the Company as such.

The recognition was embodied in a recognition agreement as testified to by former Union President Conn dated March 4, 1998. The complaint alleges, the parties admit, and I find that at all times material based on Section 9(a) of the Act, the Union has been and continues to be the exclusive bargaining representative of the unit employees.

The specific compliant allegations are as follows:

> that on or about December 8 and 15, 2000 the Company announced changes in the unit employees' medical and dental insurance, including new bi-weekly insurance deductions to be effective and implemented on January 1, 2001.

It goes without saying that the government alleges that the changes related to wages and hours and other terms and conditions of employment, and as such constituted a mandatory subject of collective bargaining. The government further specifically alleges that the failure of the Company to allegedly give notice to the Union and bargain about the changes constituted an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act.

The facts that are pertinent to this case that underlie the complaint allegations for which I am to decide, are that the Company has for an extended time provided to the

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unit employees and perhaps other employees of this Company, medical and dental health coverage.

The dental and health coverage has been provided by various insurance providers over the applicable period of time herein. The Company has operated under a policy of a 80/20, 60/40 ratio for the amount of costs that will be assessed to the employees. The 80/20 ratio applies to the employees themselves. The 60/40 ratio applies to dependents or others as explained in the various exhibits herein of which it is not necessary that I allude to in detail.

The Company has, at least starting in 1999, passed on any increases in premiums that it was assessed from the carrier on to the employees and indirectly on to the dependents or others covered under the policy in a 80/20, 60/40 ratio. The facts demonstrate that there was notification to the Company of at least three increases that were passed on to the employees in the ratio just indicated.

The first of those particular to this case was in 1999, in perhaps December, implemented in January of 2000, there was again an increase from the carrier to the Company in mid-2000 that was passed on to the employees and indirectly to the other individuals covered under the policies, and again at the end of 2000 there was

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an increase that was passed on to the employees in the exact same ratio each time.

Each time that there was an increase in premiums the Company notified the employees in writing that the increases were forthcoming and that they would be implemented shortly after notification to the employees.

Notification usually preceded by at least one pay period the implementation.

For example the specific allegations in the complaint before me indicate that the employees were notified on or about the middle of December 2000. They were notified twice that the new bi-weekly insurance premiums would go into effect in January, specifically January 1, 2001 .

The evidence indicates that the union was not specifically and/or as an entity notified of any of the changes I have made reference to, and specifically not given notification, as an entity, on either December 8 or 15, 2000 that there was going to be an increase in the medical and dental insurance premiums effective January 1, 2001.

The evidence is quite clear that there were no negotiations between the Company and the Union regarding any of the announcements of increases in insurance premiums and the implementation of those premiums. There is

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likewise no evidence that the union ever requested to bargain about the increased premiums before their request to the Company following the January 1, 2001 implementation of the announced December 15, 2000 increase in premiums.

Following the January 1, 2001 implementation of the increase in insurance premiums on a bi-weekly basis, the current President of the Local Union, Puente, testified that co-workers spoke with him about the changes indicating among other things that they were having difficulty obtaining insurance cards after the January 1, 2001 increase.

The Local Union President estified that he e-mailed the Company about his concerns and the e-mail was received into evidence. He also testified that he spoke with International Union Representative Bruce Nelson and that International Representative Nelson apprized the Local Union President that this was what he believed to be a mandatory subject of bargaining and that they should view it as such and proceed forward.

And then we come to the charge being filed and the subsequent complaint that I'm hearing being issued. Those are essentially the facts that this case is based on. The Government argues that number one, an increase in premiums

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on insurance policies is a mandatory subject of bargaining, that the announcement in December of 2000, like previous announcements was a fait accompli that the Union and the employees, to the extent the Union was notified, was merely that this is what is taking place and the changes will take effect on a given date, and here's what the new rates will be.

The Government argues that since it is a mandatory subject of bargaining and that no notice, based on the Government's argument was given to the Union, and no opportunity to bargain, that the Company has violated the Act and must be order to rescind their actions and negotiate either to an understanding or an impasse and to refund or at least hold in abeyance the

funds, additional funds that have been collected for the health coverage, until the matter is properly egotiated.

The Union would argue consistent with the Government's position. The Company on the other hand would argue that it was simply maintaining the status quo, that it had always, at least in the times that are applicable to this case from 1999 forward, which would involve the current ownership of the Company herein, has consistently and always passed on any increase in premiums in the same percentage that it had previously done.

Whatever the insurance provider charged in addition to

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what it had previously charged, that is the increases, were passed on to the employees and indirectly to their dependents and others on the same percentage basis. The Company would argue that it was simply maintaining the status quo.

The Company would further argue, that even if it had an obligation to bargain about the matter, that the Union acquiesced in the increases and that by its inaction it had waived its right to negotiate over the increase in premiums, and that as such the complaint should be dismissed.

The Company in support of that position would further argue that if the Union ever had any compliant about it, it neither challenged nor objected to it, and that it must now live with the procedure that it has for a number of times acquiesced in.

An employer, such as the Company herein, has a duty to bargain over terms and conditions of employment for its bargaining unit employees. I don't think there's any dispute in this case, but that the Company had, and continues to have a bargaining obligation with the Union.

At issue herein is whether that obligation extended to the instant issue, that is the changes in the unit employees' medical and dental insurance premiums that went into effect on January 1, 2001. Medical insurance coverage has been held to involve terms and conditions of

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employment such as to require bargaining thereon. Stated differently, medical and dental insurance coverage and premiums are mandatory subjects of bargaining. I find that the Company did not give the Union, as an entity, any prior notice or offer to bargain about the changes in the amount of premiums for the medical and dental insurance that it announced on December 8 and 15, 2000 that was to take effect on, and did take effect on January 1, 2001.

I find that the Company's failure to do so, absence some valid defense, violates Section 8(a)(1) and (5) of the Act. Did the Union by its actions prior to the January 1, 2001 implementation waive its right to bargain on this matter?

I find they did not waive their right. Waivers of statutory rights are not to be lightly inferred. But must instead be clear and unmistakable. Even when an employer, such as the Company herein, would attempt to rely on past notification of changes in terms and conditions in the policies of health, medical and dental coverage, nothing in those prior notifications would indicate that the Union, by notcomplaining about such, waived its right to bargain over such.

For there to be a waiver the issue must be fully discussed, onscientiously explored, and the Union must conscientiously yield or clearly and unmistakably waive its

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interest in the matter. There has been no such showing in this case. The fact that the Union did not protest or demand to bargain over previous unilateral changes as set forth in 1999 and 2000, does not require a different result.

The Board has consistently held that a Union that acquiesces in an employer's unilateral changes in terms and conditions of employment does not irrevocably waive its right to bargain over such changes in the future. The Company in one of its various defenses alleges that the complaint allegations herein are barred by the statutory limitations set forth in Section 10(b) of the Act.

There has been absolutely to showing in this record of any alleged violation that would be precluded under Section 10(b) of the Act. I find that the Company as alleged in the complaint unilaterally changed the premiums for the medical and dental insurance coverage on January 1, 2001, and that it did so without any legal bargaining justification. That is it gave no prior notice to, nor did it afford the Union an opportunity to bargain with respect to this conduct. And as such its actions violated Section 8(a)(1) and (5) of the Act.

And I shall order that the Company rescind the increased premiums, hold such premiums in escrow, until such time as the Union and the Company have negotiated an

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agreement on this matter or they have reached impasse. If at that point it has not been resolved, then the additional charges should be returned to the individual employees.

I find all of this independent of the statement of position provided by the Company to the Government dated April 11, 2001, but I stand in full agreement with Co-Counsel for the Company's assessment as reflected in her position paper that "The Post Tribune understands that the cost of insurance premiums is a mandatory subject of bargaining. On or about December 2000 the Post Tribune unilaterally increased the insurance premiums of bargaining unit employees without notice and without bargaining." Perhaps she had it right.

In due time the Court Reporter will serve on me a copy of the transcript of this proceeding. At that point I will certify to the Board those pages of the transcript that constitute my decision with corrections and it is from that certification forward that the appeals period runs. Or at least that's my understanding of the Board's rules and regulations.

However, I would invite you to review the Board's rules and regulations for yourself and not be bound by my understanding of them. As a matter of procedure, once I receive the transcript I will make corrections thereon and will make an attachment showing you precisely what

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corrections I made. I will attach a notice that is to be posted by the Company for the appropriate period, and I will incorporate

a summary of the order that I have included herein. And then any party is privileged if they care to to take exceptions from that period forward.

Let me state that it has been a pleasure to be in Chicago, Illinois and with that this trial is closed. (Whereupon, the proceedings concluded at 3:45 p.m.)